

SENATE BILL 795

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2004 Regular Session  
4lr2782  
CF 4lr2783

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By: **Senator Dyson (Chairman, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area)**

Introduced and read first time: February 16, 2004

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 23, 2004

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 26, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**  
3 **Dwelling Units**

4 FOR the purpose of requiring a local jurisdiction to include all dwelling units in  
5 calculating a certain dwelling unit density ratio under the Chesapeake and  
6 Atlantic Coastal Bays Critical Area Protection Program, with a certain  
7 exception; defining the term "dwelling unit" as it applies to the critical area  
8 program; authorizing a local jurisdiction to consider one additional dwelling unit  
9 as part of a primary dwelling unit under certain circumstances and for certain  
10 purposes; providing for the construction of this Act; prohibiting the separate  
11 subdivision or conveyance of certain dwelling units under certain circumstances;  
12 requiring a local jurisdiction to maintain certain records and to report to the  
13 Critical Area Commission for the Chesapeake and Atlantic and Coastal Bays on  
14 a certain basis; requiring the Commission to report to certain legislative  
15 committees on a certain basis; providing for the application of this Act; and  
16 generally relating to dwelling units in the Chesapeake and Atlantic Coastal  
17 Bays Critical Area.

18 BY repealing and reenacting, with amendments,  
19 Article - Natural Resources  
20 Section 8-1802(a) and 8-1808.1(e)  
21 Annotated Code of Maryland  
22 (2000 Replacement Volume and 2003 Supplement)

1 Preamble

2 WHEREAS, It is the intent of the General Assembly to clarify the definition of  
3 "dwelling unit" and to include all structures meeting that definition for the purpose of  
4 density calculations in the resource conservation area of the critical area; and

5 WHEREAS, The General Assembly realizes that, subject to certain limitations  
6 and local discretion, some local governments may prefer to provide a degree of  
7 flexibility in regard to an additional dwelling unit that may be considered part of a  
8 primary dwelling unit for density calculations; and

9 WHEREAS, It is the intent of the General Assembly to monitor the effect of this  
10 clarification and flexibility and their related density calculations, particularly as  
11 these refinements may impact the implementation of local critical area programs, and  
12 to provide further clarification, if necessary, to ensure that local programs are  
13 implemented in accordance with underlying legislative intent; now, therefore,

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Natural Resources**

17 8-1802.

18 (a) (1) In this subtitle the following words have the meanings indicated.

19 (2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight,  
20 Sinepuxent, Newport, and Chincoteague Bays.

21 (3) "Atlantic Coastal Bays Critical Area" means the initial planning area  
22 identified under § 8-1807 of this subtitle.

23 (4) "Chesapeake Bay Critical Area" means the initial planning area  
24 identified under § 8-1807 of this subtitle.

25 (5) "Commission" means the Critical Area Commission for the  
26 Chesapeake and Atlantic Coastal Bays established in this subtitle.

27 (6) "Critical Area" means the Chesapeake Bay Critical Area and the  
28 Atlantic Coastal Bays Critical Area.

29 (7) "Development" means any activity that materially affects the  
30 condition or use of dry land, land under water, or any structure.

31 (8) (I) "DWELLING UNIT" MEANS A SINGLE UNIT PROVIDING  
32 COMPLETE, INDEPENDENT LIVING FACILITIES FOR AT LEAST ONE PERSON,  
33 INCLUDING PERMANENT PROVISIONS FOR SANITATION, COOKING, EATING,  
34 SLEEPING, AND OTHER ACTIVITIES ROUTINELY ASSOCIATED WITH DAILY LIFE.

1 (II) "DWELLING UNIT" INCLUDES A LIVING QUARTERS FOR A  
2 DOMESTIC OR OTHER EMPLOYEE OR TENANT, AN IN-LAW OR ACCESSORY  
3 APARTMENT, A GUEST HOUSE, OR A CARETAKER RESIDENCE.

4 (9) "Growth allocation" means the number of acres of land in the  
5 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local  
6 jurisdiction may use to create new intensely developed areas and new limited  
7 development areas.

8 [(9)] (10) "Includes" means includes or including by way of illustration  
9 and not by way of limitation.

10 [(10)] (11) "Land classification" means the designation of land in the  
11 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance  
12 with the criteria adopted by the Commission as an intensely developed area or  
13 district, a limited development area or district, or a resource conservation area or  
14 district.

15 [(11)] (12) "Local jurisdiction" means a county, or a municipal  
16 corporation with planning and zoning powers, in which any part of the Chesapeake  
17 Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this  
18 subtitle, is located.

19 [(12)] (13) (i) "Program" means the critical area protection program of  
20 a local jurisdiction.

21 (ii) "Program" includes any amendments to the program.

22 [(13)] (14) (i) "Program amendment" means any change to an adopted  
23 program that the Commission determines will result in a use of land or water in the  
24 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner  
25 not provided for in the adopted program.

26 (ii) "Program amendment" includes a change to a zoning map that  
27 is not consistent with the method for using the growth allocation contained in an  
28 adopted program.

29 [(14)] (15) (i) "Program refinement" means any change to an adopted  
30 program that the Commission determines will result in a use of land or water in the  
31 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner  
32 consistent with the adopted program.

33 (ii) "Program refinement" includes:

34 1. A change to a zoning map that is consistent with the  
35 development area designation of an adopted program; and

36 2. The use of the growth allocation in accordance with an  
37 adopted program.

1 [(15)] (16) (i) "Project approval" means the approval of development,  
 2 other than development by a State or local government agency, in the Chesapeake  
 3 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local  
 4 approval authority.

5 (ii) "Project approval" includes:

- 6 1. Approval of subdivision plats and site plans;
- 7 2. Inclusion of areas within floating zones;
- 8 3. Issuance of variances, special exceptions, and conditional  
 9 use permits; and
- 10 4. Approval of rezoning.

11 (iii) "Project approval" does not include building permits.

12 8-1808.1.

13 (e) (1) ~~It~~ EXCEPT AS AUTHORIZED UNDER PARAGRAPH (2) OF THIS  
 14 SUBSECTION, IN calculating the 1-in-20 acre density of development that is  
 15 permitted on a parcel located within the resource conservation area, a local  
 16 jurisdiction [may]:

17 ~~(+) (I) SHALL COUNT EACH DWELLING UNIT, REGARDLESS OF THE~~  
 18 ~~SIZE OF THE DWELLING UNIT, ITS LOCATION OR CONFIGURATION, OR ANY~~  
 19 ~~RESTRICTIONS ON ITS OCCUPANCY; AND~~

20 ~~(2) (II) MAY~~ permit the area of any private wetlands located on the  
 21 property to be included, under the following conditions:

22 [(1)] ~~(+)~~ 1. The density of development on the upland portion of the  
 23 parcel may not exceed 1 dwelling unit per 8 acres; and

24 [(2)] ~~(+)~~ 2. The area of private wetlands shall be estimated on the  
 25 basis of vegetative information as designated on the State wetlands maps.

26 (2) (I) WITHIN A RESOURCE CONSERVATION AREA, A LOCAL  
 27 JURISDICTION MAY CONSIDER ONE ADDITIONAL DWELLING UNIT PER LOT OR  
 28 PARCEL AS PART OF A PRIMARY DWELLING UNIT FOR THE PURPOSE OF THE DENSITY  
 29 CALCULATION UNDER THIS SUBSECTION IF THE ADDITIONAL DWELLING UNIT:

30 1. A. IS LOCATED WITHIN THE PRIMARY DWELLING UNIT  
 31 OR ITS ENTIRE PERIMETER IS WITHIN 100 FEET OF THE PRIMARY DWELLING UNIT;

32 2. B. DOES NOT EXCEED 900 SQUARE FEET IN TOTAL  
 33 ENCLOSED AREA; AND

34 3. C. IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM  
 35 AS THE PRIMARY DWELLING UNIT; OR



1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect June 1, 2004.